SPEECH

OF

HON. ROBT. TOOMBS, OF GEORGIA,

ON

PROPERTY IN TERRITORIES.

DELIVERED IN THE SENATE OF THE UNITED STATES, MAY 21, 1860

The Senate having under consideration the resolutions submitted by Mr. DAVIS on the 1st of March, 1860, relative to the equality of the States, the rights of all the citizens to emigrate to the Territories with slave property, and denying the power of Congress or a Territorial Legislature to interfere with this right—Mr. TOOMBS said:

Mr. PRESIDENT: I did not concur in the policy of introducing the resolutions upon your table when they were originally presented by my friend from Mississippi, (Mr. DAVIS,) and, until within the last ten or twelve days, I had no purpose to participate in the debate upon them. I thought that they announced principles so just and so proper, of such universal acceptance, that they needed no support from anything I might be able to say in their favor. But, sir, within that time, these propositions, involving the fundamental principles of our Government, have not only been assailed and condemned, but all those who hold them and maintain them, as they were held and maintained by my personal and political friends at the late Charleston convention, have been charged with violating good faith, and with having objects unfriendly to the existence of the Government; and my own humble opinion has been invoked to swell the mighty torrent of authority by which it is sought to overwhelm them. I deem it, therefore, my duty to my country, myself, and to those who agree with me in opinion, in all parts of the Republic, to defend these principles.

The first objection which meets me is the declaration from some well-meaning men, that they are abstractions. Sir, this is a great mistake. Far from it. There is a terrible practicality in them. There is a vital energy in them that is shaking your political, your social, and even your moral systems from the center to the circumference. They are struggling to be acknowledged, to be recognized; and in their recognition, in my judgment, alone is to be found the permanent peace, safety, and security of the State.

But, sir, if they be abstractions, they are scarcely less worthy of our consideration. The great question is, are they truths? To submit to wrong is often far less injurious to society in its consequences than to surrender a principle. It is one of the marked characteristics of the American character, one which attracted the attention and approbation of some of the ablest and best men of the last century, that they measure a public danger by a principle, and not by a grievance. Mr. Burke, in his speech on conciliation with America, very beautifully expresses this characteristic of the American colonies. He says:

"In other countries the people, more simple and of a less mercurial caste, judge of an ill principle in Government by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff tyranny in the tainted breeze."

One of the greatest of our own statesmen, often called the Father of the Constitution, in a paper of great force and merit, which he drew up in 1784, protesting against the action of the Virginia Legislature, tending, in his judgment, to infringe the rights of conscience, strongly applauded this same characteristic of our people, He said:

"It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it."

Sir, the disregard of this sentiment has brought upon us many of our present dangers. We, too, must not wait until dangerous and unsound political principles shall have strengthened themselves by exercise, or shall have entangled us in precedents. We have

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had quite enough of these evils already. It is time to augur danger in the distance, and to warn the country of its rapid advance. Sir, let us examine what sort of abstractions these are, for we cannot avoid them by calling them abstractions. When the fundamental principles of our Government, of all social order, are condemned; when new and dangerous theories and dogmas are attempted to be interpolated upon our political system; when our dearest constitutional rights and highest constitutional duties are attempted to be wrenched from our hands and placed in the hands of others, and that, too, with the avowed purpose of enabling the new possessors to destroy those rights by neglecting these duties, it is too late to answer me by crying: "Peace! peace! be still; these are abstractions." Public duty demands of me to defend these rights, thus assailed. I shall begin this duty by a consideration of the fifth resolution. The rest, I believe, have attracted but little attention, and probably meet very general acquiescence. The fifth resolution declares:

"That if experience should at any time prove that the judicial and executive authority do not possess means to insure adequate protection to constitutional rights in a Territory, and if the territorial government should fail or refuse to provide the necessary remedies for that purpose, it will be the duty of Congress to supply such deficiency."

The resolution proposed at Charleston, which was commented on by my honorable friend from Illinois (Mr. DOUGLAS) so largely the other day, announces identically the same principle, and only carries it everywhere else as well as to the Territories, thus giving it a more enlarged application, with the addition of a few words merely explaining this resolution, and no doubt carrying out the intention of the draughtsman, I approve of every word of it. I would simply add to it, "to the extent of its constitutional powers." In other words, the duty of this Government is to maintain the constitutional rights of the people in the Territories, in the States, everywhere, to the extent of its constitutional power. That is a plain principle. It is one that has received universal approval in all centuries and in all countries. For this object, mainly, Governments were instituted among men. It is the corner-stone of the social fabric, neither affected by the forms of Government nor the state of civilization. Therefore, as this resolution contains nothing but this plain truth, everywhere acknowledged, I think it would be but fair to the honorable Senator from Illinois to restrict his denunciation rather to what he supposes to be the misapplication of the principle, than to the principle itself; and, therefore, I assume that he objected to its application, and not to the soundness of the principle.

How could you establish a Government without the power, coupled with the duty, of using all its appropriate functions to secure the exercise of every right of every one of its citizens or subjects? It belongs to no particular form. Whether it be monarchical, or republican, or a mixed Government, this duty belongs to all equally. It is the life-blood of all Governments. It is the price of obedience, of allegiance; and without it no man and no people can or ought to submit to any form of government upon earth. Go back to the most distant ages of time, and you will find this principle recognized and cherished by all peoples, barbarous and civilized, and in every intermediate stage. Go to all systems of jurisprudence; go to all the publicists in every age, and you will find this principle has been everywhere acknowledged. But it is denied here, and not only denied, but it has been affirmed, in this the nineteenth century, in the Senate of the United States, that the assertion of the principle of the resolution that I have just read, by the Charleston convention, is a disunion measure; and if it is insisted upon, it must necessarily overturn the Union of the States.

If it be true, the Union of these States cannot stand with the Constitution of the United States; if it be true, the Union of these States cannot stand on principles that all other Governments have stood on; it is *sui generis*, incapable of standing on those fundamental principles which alone hold society together. We not only govern our own people in our own territory, to the whole extent of our jurisdiction, but both the political parties of this country, whose late proceedings have been brought into this body, declare it to be the duty of this Government to protect our citizens—native and naturalized—not only within our own territorial jurisdiction, but to the utmost parts of the earth. I am quite aware of the supposed political necessity which impelled all parties, both at Charleston and Chicago, to give this broad recognition to this right of protection to naturalized citizens. It was no abstraction when applied to them; it meant *votes*. Here it was neither an abstraction nor dangerous to the Union; and therefore, I suppose, was adopted "unanimously and by acclamation." Nor was it done grudgingly, but with princely liberality.

You bind us to go to China; to go to Russia; to make war in Germany, or with the Queen of England, or wherever else on the face of the earth it may be necessary, in order to protect the naturalized citizen in his life, his liberty, his property, and all other rights of citizenship; and yet you are paralyzed, your hands are tied, when you are called upon to protect the property of your native-born sons, even in Territories won by their toil and blood. Then the Union is in danger; then we hear of abstractions; then it becomes an issue of union or disunion, even to put the recognition of this right in a party platform, the frailest of all depositories of political truths; and, thanks to Providence, of political errors as well. I do not dispute the proposition that we are bound to protect native or

naturalized citizens. You have the right, and it is your duty, to protect both everywhere. This duty is limited only by your power and the safety of the State. But what are the rights of either native or naturalized citizens in foreign countries, must be determined by your treaties, and the laws of nations. With these modifications, I accept the principle of protection as claimed by its advocates; but where two independent States are claiming conflicting rights or duties, in respect of the same person, what are his rights must be determined by the laws of nations and your treaties, not by our municipal laws, and still less by party platforms.

But then, when a right is ascertained and clearly fixed, nothing but the most dire necessity, inability without a greater danger to the State, can relieve any Government of this great duty of protecting its people in their rights of personal liberty and property; and we have done it, sir. We have followed our citizens under our flag to all parts of the earth. We have followed them in distant lands, in pursuit of lawful occupations, wherever they might lawfully travel or reside, under our treaties and the laws of nations. We have watched over them, cared for them, protected them, their property and pursuits, against wrongs. That is right. It is the glory of your Government that you shall perform this duty well everywhere. It will be a disgrace to your Government if you should not do it at home. Wherever your flag floats; wherever you have jurisdiction in your own country, and to the utmost extent of that jurisdiction, it is your duty to bring the power of the Republic to vindicate, to protect all the rights of the humblest citizen in the land. This is the principle; it is conceded it can go everywhere else; can take the wings of the morning and fly to the utmost parts of the earth, and there search for and preserve every right of every citizen. You can find no spot of ground on which this is not law and duty, except in the Territories of the United States of America. That is the only place where I ever heard of the rights being disputed. I wish to inquire into this exception. I demand to know why, where our jurisdiction is paramount and exclusive, our constitutional powers cannot be used to protect every right of person and property in the common Territories as well as everywhere else?

Sir, if you will look through your State and Federal constitutions everywhere, you will find written in letters of light the recognition of this principle. The whole complex machinery was built up to secure protection to the citizen. For what have you Governors and judges and legislators and sheriffs in States? For what does the Constitution of the United States provide executive, legislative, and judicial departments; for what does it grant power to lay and collect taxes, duties and imposts; to define and punish piracies and other offences on the high seas and offences against the law of nations; to declare war; to raise and support armies; to provide for calling forth the militia; to execute the laws of the Union? For what does it enjoin the high duty on this Federal Government to PROTECT each State against invasion from without and domestic violence? Sir, there is but one answer—protection, protection.

Sir, our system is one, too, that is sufficient for all these things. The resolution asserts the duty of protection of *constitutional* rights. Show me a right secured by the Constitution of the United States anywhere within your territorial limits, and I will show you a power to protect it. We talk loosely of this being a Government of opinion; we loosely talk of sovereignty in the people. That is very well in some places—in fourth of July orations, when men sometimes talk as though it were a pity to mar sound by talking sense. Sir, the people of the several States of this Union are sovereign, and in the exercise of that sovereignty made their State governments, and made this Government, and clothed them with powers to protect the rights of each and every citizen against all assaults, from whatever quarter they may come, either from without or from within, even from the people themselves.

While we speak of governments of consent, the philosophical inquirer into our system will see behind the even-balanced scales of justice the gleaming sword. It represents the power of the people; it represents the majesty of the laws. If you acquiesce in the just administration of its rightful laws, you can call it a government of consent, if it pleases you; oppose the exercise of its rightful powers and duties, that gleaming sword settles the question here as well as at St. Petersburg, and ought to do it. You may take the most trifling article of property and the most inconsiderable, in any State of the Union, under a State constitution, and whenever necessary the public power protects it. Bring an action of trover for a horse in Oregon—his value is immaterial—let your right be established by the humblest judicial officer having cognizance of the cause in that distant State, and you can be protected in that right by the whole power of the Confederacy. If the officer who seeks to execute process, in order to put you in possession of your own, is resisted by illegal violence, he can call upon the sheriff to give him the power of the county to aid him in the execution of his duty. If the resistance is too great for that, the next call is on the Governor, for the whole militia of the State. If this shall prove inadequate or unavailable for the execution of the law, then the President may be called upon in the mode prescribed by the Constitution. Then the entire Army, the entire Navy, the entire militia of the United States, can be marched to those distant shores to protect the most humble claimant in the secure enjoyment of his property. That is your Govern-

ment. It recognizes no sovereignty—popular or other sovereignty—in the Territories or elsewhere; no power, no means, lawful or unlawful, strong enough or crafty enough, neither by action nor by non-action, to wrench one constitutional right from the grasp of the feeblest hand that owes her allegiance. The law is the supreme power in this land, made king by the sovereign people of the States—the only sovereigns the law recognizes. This king—the law—goes into sovereign States and has itself executed; nor does it thereby lessen, diminish, or impugn that sovereignty. States are sovereign who obey no law except the laws of nations and the laws made by themselves. To obey the latter, to stand by and maintain their compacts, is the highest glory of sovereignty. This sovereign—the law—armed with the Constitution, has gone into Massachusetts, and, amid the clamors of law-breakers, and against the wild passions of the hour, seized and carried away into bondage a fugitive from labor. It can go there again, or in any other State on a like mission.

But we are told it cannot go into the Territories. It may enter State sovereignties; but within the sacred precincts of "squatter sovereignty," within this "holy of holies," it dare not enter. But facts are stubborn things. Your statute-books tell me, our sacrilegious fathers, (if this be sacrilege,) from the beginning of the Government, spurned this sacred pretension, and their sons have faithfully followed in their footsteps to this day. It cannot be disputed that we have not only done this thing—entered the Territories for the protection of persons and property—but it is also true that we bound ourselves by solemn compacts with France in the purchase of Louisiana, with Spain in the purchase of Florida, and with Mexico by the treaty of Hidalgo-Guadalupe, to do this very thing, and to continue the protection of the liberties, property, and religion of the people in the countries acquired from them respectively, until they should be admitted into the Union. I will hereafter show in what manner we have kept our faith and performed our compacts. But now, after the lapse of seventy years, our power to protect the rights of the people is denied and opposed. It is averred that it cannot be done—

1. Because the people inhabiting any Territory, after Congress has granted them a territorial government, are sovereign, and by virtue of that sovereignty, either under the Constitution, or in some other way, have the right to legislate for themselves in all matters concerning their domestic institutions.

2. Because we are estopped from continuing to exercise this right by the acts of 1850, providing governments for the Territories acquired from Mexico by conquest, and the act of 1854, granting a temporary government to Kansas and Nebraska, and by certain party platforms, and the engagements and undertakings of a large number of eminent persons now or heretofore engaged in the public service.

I have stated these objections to the best of my understanding of them. The latter objection is a little indefinite and shadowy; but the fault, I think, will be found in the objection itself, and not in my manner of stating it. I will take up these objections in their order.

1. What is sovereignty? I will not go into any abstruse investigation of this much-disputed point. A very plain and undisputed definition of it will cover this case. Vattel says, a sovereign and independent State is one "that governs itself by its own authority and laws;" "one that acknowledges no other law than that of nations," except its own laws. (Vattel, book 1, chap. 1, p. 2.) I have found none of the publicists who controvert these plain definitions. Do the Territories of the United States occupy this relation to the other nations of the world? This can only be tested by an examination, first, of their origin, and then of their forms. Territorial governments have hitherto been established upon the public domain belonging to the United States. These lands were either acquired by cessions from the States, or by treaties with foreign Governments, or by conquests, ratified by treaty. In all these cases jurisdiction and soil were ceded to the Government of the United States under conditions stated in the contracts. None of these contracts acknowledged any sovereignty in the communities thus transferred. It placed them, in every case, under the power and protection of the United States, to be governed by the compact of cession, the laws of nations, and conformable to our own Constitution. Being thus subjected to our government, I know of but two modes by which such a people can become sovereign: by *force*, or by consent of the proper authority of this Government, according to its Constitution. The first (force) is not pretended. I proceed to examine into our legislation in respect to them, to see if they have ever obtained it by consent.

Under the old Confederation, our fathers bound themselves to take upon their shoulders the burden of governing all the people who were then settled in, or would thereafter settle in, the territory northwest of the Ohio river, until the time arrived to endow them with the rights of self-government, when they should be admitted into the Union. This plan of government gave these people not the least uncontrolled participation in their own government of any sort. It made a subject, and not a sovereign people. It neither allowed them to choose their executive or judicial officers, nor, in the first instance, any portion of their legislators. And they were never permitted to exercise a single function of government except in obedience to organic laws, in the enactment of which they had

no part. The first Congress established the same plan of government over the Territories lying south of the Ohio river, except its anti-slavery clause, and altered, changed, and modified it at pleasure.

The first acquisition which we made to this Republic from a foreign Power was in 1803, by the treaty of Paris. We undertook by treaty to protect the inhabitants of that country from the Balize to the forty-ninth degree of north latitude, and from the Mississippi river to the Pacific ocean. We agreed and pledged our faith to France, who sold the country and transferred the people to us, that we would protect them in their liberty, in their lives, in their property, and in the religion which they professed, until we thought proper to admit them into the Union upon an equal footing with the other States. Thus Jefferson affirmed, by treaty, the policy which Washington and Adams had practiced under the Constitution, to govern and protect the people of Territories in such manner as in our judgment would best promote their interest, subject only to the principles of our own Constitution; and even they, it seems to me, were oftentimes stretched for this beneficent purpose of protection. Thus far, then, we have the principle of protection affirmed and practiced upon by Washington and Adams, under the powers of the Constitution, and affirmed by Mr. Jefferson in a solemn treaty with a great foreign Power, our friend and ally in the Revolution. To her we pledged the faith and power of the Republic to do this thing—to protect their people against all the sovereigns of the earth, popular sovereigns included. This protection was to continue and follow them until the Territory they occupied was admitted as a State of the Union, upon an equal footing with the rest of the States. We bargained that nothing but State sovereignty could relieve us from these solemn pledges of protection, when they must stand where the rest of the States stand in relation to protection. Congress immediately entered upon the discharge of this obligation, by the passage of the act of 31st October, 1803:

"SEC. 2. *And be it further enacted*, That until the expiration of the present session of Congress, unless provision for the temporary government of the said Territories be sooner made by Congress, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion."—*United States Statutes at Large*, vol. 2, p, 245.

This act did not mince matters. It certainly paid no respect to the sovereignty of the people of this vast domain. The powers of a Spanish Governor General are not usually based on any great respect for popular sovereignty; but, if the means are subject to criticism, the end was good; these great powers were given to protect property and religion. A large part of the property we bound ourselves to protect was property in negro slaves. A glorious sovereignty, indeed! It was such popular sovereignty as the Queen of the Antilles, ever-faithful Cuba, enjoys to-day. They made no laws; they had nothing to do with the selection of their rulers, executive, legislative, or judicial; they were governed by such person or persons as the President of the United States should designate, and just such laws as their rulers might choose to enact.

This was an extraordinary emergency, I admit. Sir, in a year afterwards, the Congress of the United States passed another law, by which they put the entire government of that country in the hands of a Governor and thirteen councilors, not selected by the people, but selected by the President; and in their hands were placed executive, legislative, and judicial power. Here was an organized government, and here was "popular sovereignty." These sovereigns had no more control over their own government than the slaves upon any plantation in Louisiana. Congress undertook the duty of protection. In their judgment, this was the most appropriate way. In their judgment, the people were then incapable of any degree of self-government, and they gave them none. After that government had gone on a few years, perhaps as early as 1805, it was modified by Congress, and, from time to time, Congress continued to alter and change it at pleasure, enlarging the powers of the people over it, until that portion of it now known as Louisiana was admitted into the Union in 1812; but up to that time, they were governed first by the powers of the Governor General, then by a Governor and Council, then by a Governor and Council and elective Legislature. In other words, they were governed precisely as Congress chose to govern them. No man doubted then, and no man doubted for fifty years of this Government, that Congress had exclusive jurisdiction over all the Territories of this country. There was a question as to whether or not it was unlimited. It was settled that it was controlled by the Constitution, but that it was exclusive—never had been opposed, to my knowledge for the first fifty years of the Government. Governors, councilmen, judges, were all appointed by Congress, removable at the pleasure of the Government; and when representative government was extended to them, their action was also subject to the power of Congress.

There is another remarkable fact showing the tender regard of the government of Mr. Jefferson for this doctrine of popular sovereignty in Territories. In 1804 Louisiana was divided into two Territories—the Territory of Orleans, and the Territory of Louisiana. There were but few settlers in that country between the thirty-third parallel, the northern line of Orleans Territory, and our northern boundary, There were settlements at St.

Louis, Dubuque, Arkansas post, and other isolated points, mainly on the Mississippi. Congress did not reverence this dogma; they thought these people not fit for self-government, and therefore proceeded to provide one for them. They had confidence in the Governor and judges of Indiana, and therefore they turned over the government of the whole of this vast empire to be governed by the Governor and judges of Indiana. They were their first rulers and lawgivers; and I suppose they must have executed the trust very well, as Missouri, a part of the Territory, still retains some of their laws as a part of her judicial polity. These sovereigns were not governed by themselves, nor by laws made by themselves, nor by persons appointed by themselves; but were governed by the officers of another Territory, who did not even reside among them, but made, sent over, and put in force laws for their government. This is popular sovereignty!

But the act of 1804 admitted and protected slavery; the foreign slave trade was forbidden, the domestic slave trade was forbidden. This legislation, especially the last provision, was of doubtful authority, but was in harmony with the general legislation of the slaveholding States. But the same act affirmed the right of every citizen of the United States to carry his own slaves there, and settle with them, and to receive the protection of the Federal Government. That was Jefferson's policy; that was Jefferson's law. The Republican party say that these are their fathers; they want to bring back the Government to the good old days of Jefferson and Madison. I show the road, and invite them to follow it. The act reads as follows:

"No slave or slaves shall, directly or indirectly, be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being, at the time of such removal, *bona fide* owner of such slave or slaves; and every slave imported or brought into said Territory contrary to the provisions of this act shall thereupon be entitled to, and receive, his or her freedom."—*United States Statutes at Large*, vol. 2, p. 786.

This law is still in force in said territory where ever it has not been abrogated by the authority of a sovereign State. The name of Louisiana Territory was afterwards changed to Missouri. Arkansas was afterwarks carved out of it; but in the changes of these Territories, these laws of Louisiana were continued in force wherever they did not conflict with subsequent laws, and they conflicted with none but the eighth section of the act of 1820, which has been declared unconstitutional by the highest judicial authority. Therefore, throughout the administration of Jefferson; throughout the administration of Madison; throughout the administration of Monroe, with the exception before specified, the protection of life and liberty and property, slavery included, in every foot of this territory, from the Belize to 49°, and from the Mississippi river to the broad Pacific, was the acknowledged duty of the Government, the policy of these patriots, and the law of the land. Under their beneficent policy, the country grew great and waxed strong, and the people were prosperous, contented, and happy.

Our next acquisition was Florida from Spain. We entered into the same stipulation to protect the liberty, property, and religion of the people. They, too, had slaves. The first government was pretty much such as we gave Louisiana. General Jackson was made governor general—a good selection. We then gave her a territorial government, with the usual limitations upon self-government, and thus governed her until her admission into the Union.

In the last government we gave to Florida, her legislative jurisdiction was declared to extend to all rightful subjects of legislation consistent with the Constitution and laws of the United States. She was forbidden to pass a bank charter. Her laws were subject to the approval of Congress. This was the usual formula of territorial bills. In the act of 1812, for the government of Missouri, the provision requiring their laws to be submitted to Congress was omitted, as in the Kansas bill, and the veto power was absolute. Then the omission to require the laws to be sent to Congress for revision was supposed by no one to impair their constitutional right to do so. Nobody, as far as I know, questioned the right of Congress to change or modify territorial laws, without regard to the wishes of the people of the Territories.

Our next acquisition was from Mexico, omitting Texas, which came as a sovereign State, under a compact made by us and herself. This acquisition from Mexico was the fruit of successful war, conquest, ratified by the treaty of Hidalgo-Guadalupe; by which treaty we bound ourselves, pledged the faith of the Republic, that we would protect that conquered people in their liberty, property, and religion, until we admitted them as States in the Union. Here, again, we bound ourselves, by the highest of national obligations, to give *protection* to life, liberty, property, and religion, in the Territories, and to continue to give it until the territorial government should be superseded by a State government. Here is a plain constitutional duty, again expressly ratified by a treaty:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

No higher law can be permitted to come between you and this constitutional obligation. If popular sovereignty comes between you and it, popular sovereignty must fall; if party platforms, or committals of politicians, they too must fall; It is the supreme law of the land that speaks, and it must be obeyed. But according to this new theory, it seems the

moment we grant a territorial government to these conquered people, one of the most legitimate and proper means of keeping our faith, we are arrested by their sovereignty; we are told: "Hold! You have no right to legislate on the subject of our domestic relations. It is our country; we are as sovereign as Pennsylvania, and we do not like your people, especially those southern slaveholders, and they shall not bring their Ethiopians within our territorial limits; and if they do, in spite of your Constitution, in spite of the treaty selling us to you, we have the lawful means to drive you out by virtue of our sovereignty."

The popular sovereignty doctrine makes the results of conquest quite a different affair from what the world had supposed, from the creation up to its advent. If they had conquered us, I do not dispute that their claim would be undeniable; but, as we conquered them, it did always appear to me, both upon principle and authority, that we had the right to govern them. I know that is the way the *fact* has been from the beginning. I am boldly confronted with the assumption that the conquest of a people does not destroy the sovereignty of the conquered; but, on the contrary, that they thereby have the right to hold the conquered country against their conquerors, and exclude them from its enjoyment, if they do not fancy their domestic institutions! I remember once to have read of an occurrence which, it was said, took place in the British House of Commons, which, it seems to me, is illustrative of the position of the friends of popular sovereignty. An ardent, patriotic country gentleman spoke strongly against a measure about to be consummated by a ministerial majority, and declared that he would appeal to the good sense of the people to condemn the measure. His opponent quietly whispered in his ear that he would appeal to the nonsense of the people, and beat him ten to one. I suppose this must be the idea of the friends of this dogma. We appeal to the Constitution—it is with us; we appeal to treaties—they are with us; we appeal to the laws and practice of our fathers for more than fifty years—they speak but one voice; they are all with us. I cannot see how our opponents are to succeed, except by an appeal to the nonsense of the country. Let them do it. With confidence in the right, I shall continue to appeal to their good sense.

In 1850 we came to the work of governing this conquest. We had no trouble about the rights of the Mexican inhabitants in that country. Our difficulty was about our own. It appeared that there was a Mexican decree against slavery throughout that Republic at the time of our conquest. It was doubtful whether or not it was a good law even in Mexico. It was also doubtful whether or not, if good in Mexico, it was abrogated by our Constitution. I desired the question settled by removing the anti-slavery law by act of Congress, and declare, as Congress did in 1804, under Mr. Jefferson's administration, that we had the right to enter with our slave property, and have it protected by law, until the Territory came into the Union, and then to leave the people free to make their own constitution their own way. The northern members, of all parties, with but few exceptions, asserted the right to exclude slavery from the Territory; and, whether the Mexican law did it or not, to prohibit it by law. They pleaded the eighth section of the act of 1820, commonly called the Missouri compromise, as a precedent justifing their demand. The struggle was severe. Congress found it impossible to legislate upon the subject at all for several years after the acquisition. In the mean time, gold was discovered in California. "The accursed thirst of gold" carried thousands and tens of thousands of emigrants to the Pacific coast, gathered from all parts of the world. Governmental protection was their highest need and our highest duty; but we would not legislate about them at all on account of our strife, in which California neither felt any interest or took any part. Then, as we could not, for these reasons, give California any government at all until she had more than one hundred thousand inhabitants, altogether, sufficient to admit her into the Union, she made a constitution for herself, and applied for admission under it into the Union. But it is a mistake to say she claimed this by popular or any other kind of sovereignty. She acted solely under the law of necessity. She acknowledged our right to govern her. She did homage. She acknowledged fealty; but she acted subject to our approval, because we were unable, from our internal strifes, to perform our duty to her. This disposed of a large and most valuable part of the acquisition.

The Mormons had also, in the mean time, occupied another large portion of this Territory, and it was understood had decided the question in favor of the equal rights of all in the Territory. All the remaining portion was without civilized inhabitants, and had no pressing need for any organized government. But the boundary between Mexico and Texas was unsettled at the beginning of the Mexican war, and was not settled by the treaty of peace. We took all the land claimed by Texas, with a great deal more; but did not fix the boundary between ourselves, as the successors of the Mexicans and Texas. That very fact was the final basis of settlement. The New Mexicans were averse to coming under the actual jurisdiction of Texas—we had acknowledged that the boundary of Mexico included them—therefore a bill was passed by which Texas ceded New Mexico to the United States for a pecuniary consideration. Claiming under Texas, we admitted her title. Then, being a part of Texas, slavery was lawful there; but, for the com-

pact of annexation with Texas, which was abrogated. A territorial government was formed, called the Territory of New Mexico, to which was attached all the rest of the territory acquired from Mexico by conquest; thus putting the slavery *status* of New Mexico over the conquered country, over all of which Congress erected a territorial government with these marked characteristics: first, congressional prohibition was defeated; secondly, full power of legislation upon all rightful subjects, subject to the Constitution and organic law, such legislation being expressly subject to disapproval by Congress; thirdly, giving the people of this Territory the right to come into the Union with or without slavery, as their constitution might prescribe at the time of admission; fourthly, in the mean time putting every citizen's life, liberty, and property under the old safeguard of the judgment of his peers and the laws of the land.

This was the non-intervention of that act; this was all the popular sovereignty in it. Congress governed them according to her own judgment, and not theirs. We did not introduce slavery into that country, nor exclude it therefrom; we did not seek to do it. We asked only for a *tabula rasa*—pure non-intervention by Congress against us. We were willing to stand on the principle that slavery was lawful everywhere except where it is expressly forbidden by law. We were willing to stand here, notwithstanding the oration of Lord Mansfield (as it was termed by Lord Stowell) in the Somerset case. It is true the North desired this, but there was this great difference between us: we were willing to put our legislation on our principles, and they were not. They still demanded congressional prohibition, notwithstanding they held the opposite doctrine, that slavery could exist nowhere without positive law. The Mexican territorial bill was the settlement of the territorial issues, passed by a majority of the Representatives both from the North and the South. But no line of that act recognized any other power to govern the Territory but that of Congress—not one word. We simply demanded that our right of entry into the Territories should be admitted. We were content to stand on the Constitution and the uniform practice of the Government in relation to Territories for further protection of our rights. We asked for no slave code, sir, none. Congress has never yet passed one; though seven Territories have emerged, through congressional government, into the Union as slave States. I know no wrong for which a slave code by Congress would be an adequate remedy. We did provide, as a further protection of slavery, in this bill, that all causes in which the title of slave property might be in issue might be carried to the Supreme Court of the United States, and there decided. This was a special provision in its favor. Such was the settlement of the territorial questions in 1850, which met with such universal acceptance by the people.

I come now to the "*pons asinorum*"—the Kansas-Nebraska bill. The discussion on this bill, for the last few years, is a wonderful illustration of the power of words "to darken counsel" and mystify plain questions. In 1854 it was adjudged necessary to grant a territorial government to the squatters who, obeying the laws of their nature, had passed on over the borders of Missouri and Iowa into the Indian country. There was one difficulty in the way, and but one—no principle but one, great or small; and without that, it would have passed both branches of Congress as easily as a bad pension bill. That principle was the same which was so bitterly contested, and, we thought, condemned, by all sides in 1850—*congressional intervention against slavery.* In 1820 Congress had put a section into the law admitting Missouri into the Union, declaring that slavery or involuntary servitude, except for crime, should never exist in that part of the territory acquired from France lying north of 36° 30′ north latitude, and outside of Missouri. The country proposed to be embraced in the Territories of Kansas and Nebraska lay under the prohibition. There was not the least controversy between the North and the South on any other point in the proposed bill. We said, repeal this eighth section of the act of 1820; it is not only unjust and unequal and unconstitutional, but it is in conflict with the principle and substance of the settlement of 1850. The northern Democrats generally agreed to it; the Free-Soilers, of course, raised a terrific yell about the sacred compact of 1820, which they denounced, when passed, as much as they lauded it now, and for the same reason—to get power. We were willing to take an ordinary territorial bill in every other respect whatever—like that of New Mexico. That was our only point in the case. While the repeal was granted, our northern friends considered the mode of doing it important to protect them from misconstruction and misrepresentation. For this reason, and for this reason alone, the peculiar phraseology was used. It was intended that the bill should defend itself. We therefore inserted in the bill the following extract:

"That the Constitution and laws of the United States which are not locally inapplicable, shall have the same force and effect in said Territory of Kansas, as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6, 1820, *which, being inconsistent with the principle of non-intervention* by Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any State or Territory, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of the 6th of March, 1820, either protecting, prohibiting, or abolishing slavery."

The act was complete, for all purposes, down to the words "which being inconsistent," &c. All of the act after that was intended as explanatory simply of the reason of the repeal and the effect of the repeal.

The reason of the repeal was, that it was inconsistent with the non-intervention established by the act of 1850. The section repealed declared that slavery should never exist in that country, no matter whether the people wanted it or not. The territorial act of 1850 declared that, when New Mexico should be admitted into the Union, she might come in with or without slavery as her constitution prescribed. Here was an inconsistency. The New Mexican act was silent as to what were the rights of slaveholders during the territorial government, but left that question to the general principles of the Constitution and the treaty of cession, and the courts. The act of 1820 prohibited slavery in the Territory directly. Here was another conflict. The powers of legislation given to the Territories were the same in substance in both bills. Subsequently we struck out the clause in the Kansas bill, compelling the Territory to report their acts to Congress, because we wished to drive the slavery agitation out of Congress. We wanted to establish non-intervention with the ordinary legislation of the Territories as the rule; we did not seek the constitutional impossibility of getting rid of our constitutional and treaty obligations, but wanted interference to be the exception, and only in obedience to a necessity, if one should arise. Again, it was alleged that the repeal of that act would revive the pro-slavery laws of Spain and France. Whether that was the fact or not, we consented to the repeal, still willing to rest on our principles. Such was the bill; such our objects in passing it.

To facilitate the settlement of the questions about which we differed, we adopted the same principle that was contained in the New Mexican bill, referring all questions of title to slaves in the Territories to the Supreme Court. We held it was the right of slaveholders to enter with their property into the Territories, and that it was the duty of the Territorial Legislature, as well as Congress, to protect us. While our adversaries denied our right of entry with slaves, they held that the Territorial Legislature might establish and protect or prohibit slavery. Therefore we had two ways of settling the controverted points: if the territorial government decided to admit and protect slavery, there was an end of controversy in such Territory on the principles of both sides; but if it prohibited and refused protection, the question was agreed to be left to the Supreme Court to settle the principle In other words, as long as the question was undecided in one of these two ways, we would forbear to claim the exercise of any legislation by Congress to protect what we claimed as a constitutional right; but when the question was determined in our favor, either by the territorial authorities or by the Supreme Court, it was to be a settlement, *a settlement of a policy*, and not of a case, as the Senator from Illinois now pretends. We never acknowledged any residuary power, after the decision of the courts, in the Territories to destroy our rights thus settled, by either action or non-action. It then became their sworn duty to protect us, and the duty of Congress to see to it that they did protect us. We expected them to follow the example of the seven Territorial Legislatures who had given ample protection to slave property during their whole territorial existence, and whose acts while subject to the control of Congress were affirmed. They made police and other regulations under Washington, Adams, Jefferson, Madison, Monroe, and all subsequent Presidents, until the last one (Florida) was admitted into the Union. This was the true intent and meaning of the bill, and so it was understood at the time and afterwards, and, up to the decision in the Dred Scott case, by the Senator from Illinois himself. I stand by every provision of the acts of 1850 and 1854, touching Territories, now, and have ever faithfully adhered to them, and there is nothing in these resolutions or those at Charleston, passed by the majority of the committee, in contravention of them.

My bill of 1856, providing for the admission of Kansas into the Union did not contravene it in any way. It is true, that was in direct conflict with all idea of popular sovereignty in the Territories. It seized upon these pretended rights of self-government where they were alleged to have violated clear and undisputed constitutional rights, and protected the Free-Soilers of the Territories against the violation of their rights. This bill received the support of the Senator from Illinois, and every other Democrat in both Houses of Congress. It took away from the Territorial Legislatures its own ballot-box, declared who should vote, appointed Federal officers to register voters, and decide upon their qualification; appointed persons to superinted the election, and abrogated and annulled not only all laws against the Constitution, but even those that violated the just rights of the inhabitants. Where was this popular sovereignty then? There were none so poor as to do it reverence. It would have been a breach of good faith to have then undertaken to have decided what were the rights of slaveholders on the controverted points, and then to have protected them. We only protected clear and undispnted rights under my bill of 1856; but after our rights on the subject of slavery have been once settled in either of the modes prescribed, then we have the same right and the same duty is imposed on us to protect property in slaves as to protect any other right in the Territory; and which protection neither conflicts with the non-intervention contained in the compromise of 1850 or the acts of 1854. Those acts intervened to protect slaveholders by

extending the fugitive slave law to the Territory. Why? Because the constitutional right was admitted by us all. When the rights now in question were settled, they were equally entitled to your protection.

In the face of your party platforms; in the face of the settlement of 1850; in the face of your act of 1854, the Senator from Illinois, and all the Democrats in both Houses, voted for protection to the rights of the Free-Soilers in Kansas as provided in my bill. They came here and complained of various restrictions on their constitutional rights, put upon them by a pro-slavery Legislature. They said they were denied the right of suffrage without onerous taxation and odious test oaths, compelling them to swear to maintain acts they did not approve, and which they had a right to endeavor to repeal; that the ballot boxes were fraudulently prostituted to party, and not to public ends. Whether these things were true or not, we protected them against them, by declaring that such things should no longer exist in Kansas, even under the shield of "popular sovereignty." My honorable friend from Illinois quoted my speech in 1856 to sustain his side of the question. I am quite sure I would not alter a word in any one of his quotations:

"We who passed this Kansas bill, both at the North and the South, intend to maitain its principles; we do not intend to be driven from them by clamor nor assaults, nor by falsehoods, nor by any other invention of its faithless and impotent assailants. These principles we expound for ourselves. We intend that the actual, *bona fide* settlers of Kansas shall be protected in the full exercise of all the rights of freemen; that, unawed and uncontrolled, they shall freely, and of their own will, legislate for themselves to every extent allowed by the Constitution, while they have a territorial government, and when they shall be in a condition to come into the Union, and may desire it, that they shall come into the Union with whatever republican constitution they may prefer and adopt for themselves; that in the exercise of these rights they shall be protected against insurrection from within and invasion from without."

That is where I stood then. I said I would give them protection against insurrection from within and invasion without. It was said that they were invaded from Missouri; that they were overawed under color of law; and if that was true, I introduced a bill to abrogate all laws that violated their constitutional rights. They were "domestic institutions;" but I needed no court to satisfy me that they were wrong. I wanted no court to satisfy me that it was bad policy. I would not have undertaken to decide the slavery question in the same way, although it was put on the same basis. My faith, and that of every man, would have been impugned by such action in regard to so much of the slavery question as was agreed to be submitted, until the decision on the principle was had. But, surely, if there had been slaves there, I should not have considered myself bound by that bill, or by any undertaking of mine not to march the Army of the United States there to protect slave property against insurrection or invasion. How could I do it? I could not barter away this constitutional duty. I did not, nor was such the understanding at that time.

That this was my understanding, I will again show by another quotation from one of my speeches, made in 1856, read by the Senator from Illinois. I presume these extracts were the most favorable to him he could find in my whole record, and I will give him the full benefit of them, even detached, as they are, from the context. I stand by them all:

"We still tell all the owners of this public domain to enter and enjoy it, both in the North and the South, with property of every sort; exercise the full powers of American freemen; legislate for yourselves to any and every extent, and upon any and every subject allowed by our common Constitution."

This is put in large letters. I approve every word of it now. I think it very sound. I do not know what it is put in the speech of the Senator from Illinois for, unless it is to be used in order to cover some generality; to be used by people who have not quite discrimination enough to know the difference between legislating according to the Constitution and legislating against the Constitution. Again, he quotes, and in very large letters:

"I thought it was the duty of the Government to protect slave property in the Territories until they should come into the Union as States, and then let them do as they pleased. There was not a large party to sustain this doctrine; but I believed it was right then, and believe so now. But a large portion of the South, and a great number of the North, true national men, said: 'Let us leave the people of the Territories to pass on this and all other domestic relations as far as the Constitution will allow.' I agree to it."

I agree to it to-day. I shall not disturb it, and I want other people to stand by it. I expected, when the question was decided in my favor, to have the benefit of the decision. I intended to act with *uberrima fides* to the North and the South—to the Abolitionist and the slaveholder. I intended to stand by it against clamor from without and within. I demand now that others stand by the bargain.

This measure created a good deal of difficulty. Some gentlemen who had been acting with the Democratic party, said it was not consistent with the principles of non-intervention, heretofore held by that time honored institution. There were doubters and bolters. When the party met at Cincinnati, it became necessary to have a new exposition to meet the exigency of the case, and the party said the Kansas-Nebraska act was a true exposition of the doctrine of non-intervention, as held by it.

Now, sir, I am coming rapidly to the points on which our differences begin. How was this question understood at the time on the other side? I claim the indulgence of the Senate for a moment while I read some extracts from the debate of the 2d of July, 1856, upon the bill introduced by me, which I take from the Congressional Globe. My friend

from Illinois, (Mr. DOUGLAS,) in answer to some remarks of his colleague, (Mr. TRUMBULL,) said:

"My opinion in regard to the question which my colleague is trying to raise here, has been well known to the Senate for years. It has been repeated over and over again. He tried the other day—as those associated with him on the stump used to do two years ago, and last year—to ascertain what were my opinions on this point in the Nebraska bill. I told them it was a judicial question. This would not suit them. Why? Their object was to get me to express a judgment, so that they could charge me with having urged a different view at home, though I had expressed the same opinion here pending that question, and though I had previously, many times, avowed the same thing. My answer then was, and now is, that if the Constitution carries slavery there, let it go, and no power on earth can take it away."

That was my view. If we could go there under the Constitution, no power on earth except a sovereign State could take away the right. I make that exception, although it was not made in this speech. I would not imitate bad example. Language is often used in debate to meet a particular case without looking at the way in which it may be tortured for another purpose; and therefore I give him the benefit of this mode of construction. That was the import of it, no doubt; because all of us admit the power of a sovereign State to deal with the question as she pleases, to determine rights of property of every description within her limits. Therefore, I presume the Senator meant it with that qualification. He goes on:

"But if the Constitution does not carry it there, no power but the people can carry it there. Whatever may be the true decision of the constitutional point, would not have affected my vote for or against the Nebraska bill."

That is perfectly true; that is our position now; and that was our understanding at the time. General Cass addressed the Senate on the same day, and very much to the same effect:

"Mr. CASS. I have heard this subject mentioned repeatedly, but I never took any notice of it before. It is said there is a difference of construction between the North and the South on the Kansas Nebraska act. Necessarily it must be so; and if the honorable gentleman from Illinois (Mr. TRUMBULL) could not see that, he was not able to see very far into this millstone. Those who believe that slavery goes to the Territories under the Constitution, *proprio vigore*, of course believe that no power is given to the Legislature to prohibit slavery"

Neither to prohibit or destroy, nor weaken, by direction or indirection, by force or by fraud—

"but those who believe, as I do, that there is no such constitutional provision, believe, of course, that the Territorial Legislature has the power to legislate on this as on any other subject. The difference does not result from the words of that bill, but from the nature of things. The North and the South construe the Constitution differently."

Therefore, General Cass agreed with me. It was a constitutional question; it was no misunderstanding of the bill. The bill was plain, and well understood on all sides; it had no two constructions here. We differed about the Constitution, but not the meaning of the bill. All the doubt, all this clamor about two constructions, arose simply out of different constructions of the Constitution, which the bill submitted to the courts. General Cass continues:

"The South consider that the Constitution gives them the right of carrying their slaves anywhere in the Territories. If they are right, you can give no power to the Territorial Legislature to interfere with them. The major part of the North believe that the Constitution secures no such right to the South. They believe, of course, that power is given to the Legislature."

My honorable friend from Kentucky, the Vice President, whose opinions were also called in question, held precisely these same opinions upon the repeal. He said:

"The effect of the repeal, therefore, is neither to establish nor to exclude, but to leave the future condition of the Territories dependent wholly upon the action of the inhabitants, subject only to such limitations as the Federal Constitution may impose. But to guard fully against honest misconstruction, and even against malicious perversions, the language of the bill is perfectly explicit on this point.

"It will be observed that the right of the people to regulate in their own way, all their domestic institutions, is left wholly untouched, except that whatever is done, must be done in accordance with the Constitution—the supreme law for us all. And the rights of property under the Constitution, as well as legislative action, are properly left to the decision of the Federal judiciary. This avoids a contested issue which it is hardly in the competency of Congress to decide, and refers it to the proper tribunal."

I presume the honorable gentleman concurs in that opinion to-day. Certainly he ought to do so, unless he abandons truth and takes up error. The last time he had an opportunity of speaking to his constituents in Kentucky, I saw the same principles boldly and clearly expressed by him to my satisfaction, and doubtless to the satisfaction of the country.

I repeat to-day, I stand by the bargain, if you call it such, as thus expounded by those who made it. In the first place, this was the meaning of the bill; next, it was the contemporaneous construction of it by myself, by my friend from Illinois, by the present Secretary of State, and all other persons who have been quoted. It was the opinion of my honorable friend from Georgia, Mr. Stephens, whom my friend from Illinois quoted. He declared himself willing to take Mr. Stephens' exposition as his platform. Very well; let us see what it is.

Mr. POWELL read the following extract from Mr. Stephens' letter:

"And if Congress did not have, or does not have, the power to exclude slavery from a Territory, as those on our side contended and still contend they have not, then they could not and did not confer it

upon the Territorial Legislatures. We of the South held that Congress had not the power to exclude, and could not delegate a power they did not possess—also that the people had not the power to exclude under the Constitution, and therefore the mutual agreement was to take the subject out of Congress, and leave the question of the power of the people where the Constitution had placed it—with the courts. This is the whole of it. The question in dispute is a judicial one, and no act of Congress, nor any resolution of any party convention can in any way affect it, unless we first abandon the position of non-intervention by Congress.

"But it seems exceedingly strange to me, that the people of the South should, at this late day, begin to find fault with this northern construction, as it is termed—especially since the decision of the Supreme Court in the case of *Dred Scott*. In this connection I may be permitted to say that I have read with deep interest the debates of the Charleston convention, and particularly the able, logical, and eloquent speech of Hon. William L. Yancey, of Alabama. It was, decidedly, the strongest argument I have seen on his side of the question. But its greatest power was shown in its complete answer to itself. Never did a man with greater clearness demonstrate that 'squatter sovereignty,' the bugbear of the day, is not in the Kansas bill, all that has been said to the contrary notwithstanding. This he put beyond the power of refutation. But he stopped not there; he went on, and by reference to the decision of the Supreme Court alluded to, he showed conclusively, in a most pointed and thrilling climax, that this most frightful doctrine could not, by possibility, be in it, or in any other territorial bill—that it is a constitutional impossibility. With the same master-hand he showed that the doctrine of 'squatter sovereignty' is not in the Cincinnati platform; then, why should we of the South now complain of *non-intervention*, or ask a change of platform?

"What else have we to do but to insist upon our allies to stand to their agreement?"

Mr. TOOMBS. The Senator from Illinois stated that he took the letter of my distinguished friend from Georgia—with whom I have so long acted, without very much disagreeing on great questions of public policy—as his platform. Very well; what has that gentleman stated? He has stated the question just as we all have; but he says, further, that it is clear that the doctrine of my friend from Illinois has no resting-place either in the Cincinnati platform or in the Kansas-Nebraska bill, nor can it be found in the Dred Scott decision; and that the Supreme Court of the United States has decided the question in our favor; and all that he asks now is that our northern allies stand by the bargain. I think that is a pretty fair platform. Mr. Stephens states the case properly. We left the question whether slavery could go to the Territories, and whether the people of the Territories could exclude it, to the courts. He says that it is clearly demonstated by Mr. Yancey, in an unanswerable argument, that the doctrine is not in the Democratic platform; that it is not in the settlement of 1850; that it is not in the Kansas-Nebraska bill; that, in fact, it is nowhere; that it is a constitutional impossibility; and my friend from Illinois spent two days in endeavoring to show that it was a constitutional fact, instead of a constitutional impossibility.

I call upon him and his friends to stand by the bargain, to say that we referred the matter to the courts; that the courts have decided that a slaveholder has the right to go to all the Territories of the United States with his slaves; that there is no constitutional power on earth to drive him out, either in the Congress of the United States, or in the Territories. I can let the great principle of protection take its chance of being exercised whenever necessary. I am willing to intervene wherever constitutional rights are invaded. The Senator from Illinois intervened with a fugitive slave act in Kansas. He intervened to put the question before the courts; he intervened to erect courts, juries, and Legislatures, as means of protection to persons and property. In the ever-rolling tide of time, new circumstances, new necessities arise, calling for his intervention, he must give it wherever the Constitution demands it. I am content that it shall rest, as he himself has said, on the principle of all other property, entitled to the same protection as well as other property in all the Territories. In his own language, deny to any power on earth the right to drive it out, and we shall be content to tarry there at least until new dangers threaten or invade constitutional rights. I am not afraid of this great principle that I have been arguing—the right and duty of Government to afford protection. When the matter is settled, I do not doubt that many gentlemen on the Republican side would protect all the constitutional rights they would acknowledge, at least all of them who are governed by the Constitution, and not a higher law; but when the right to take slaves into the Territories is admitted in our favor, when our right to go there under the Constitution is clearly settled, and further settled that there is no power that can drive us out, I think there are some gentlemen on the other side who would give us ample protection for such admitted rights. My friend from Vermont, I am sure, would not attempt to escape that duty by indirection, or by unfriendly legislation. He would not attempt to do that which the Constitution forbade to him. The country has too much interest in this great principle of protection willingly to let it die.

Now, sir, have these questions been decided? I do not know that it is necessary to show that fact, because it is admitted; and what is admitted by the record, it is a technical rule, shall stand admitted. But I do not choose to stand upon a technical rule; I go for the substance of things. After reviewing this whole doctrine in the Dred Scott case, the Supreme Court, on page 56 of the decision, after deciding that Congress cannot interfere against slave property, say:

"And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government."

This is a sound principle, recognized everywhere.

"Now, as we have already said in the earlier parts of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed by the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the Government, in express terms, is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights."

The Supreme Court says that to this Government is confided the power and duty of protection whenever necessary, and I would take the language of this decision; it would be equally appropriate with that of the resolution—it is the duty of the Government, to the extent of its powers, to protect property in slaves in the Territories. The Senator from Illinois says that if this is done, he shall consider it a disunion movement, intended for disunion; or whether so intended or not, that will be its effect. He says that will be the result of demanding protection to constitutional rights in the Territories, thus declared, thus decided to be consonant with public law, and with your own Constitution—decided by every man upon your Supreme bench; for even the dissenting judges, Judges McLean and Curtis, hold the doctrine that the Territory is under the subjection of Congress, under the Constitution. There was no difference on that point; it was a unanimous judgment, including Judges McLean and Curtis, as well as the others, that Congress was bound to protect constitutional rights in the Territories. Will this doctrine dissolve the Union? I think not, sir. I think it will stand more truth than is here declared. I think that is under-estimating the power of the Government, and I do not think much of the strength of bad government. If it were in its last gasps, that would not hurt it; it might revive it. As long as the Government does its duty to the people, as long as it protects their rights with all its power at home and abroad, it will have a strength that will make it as enduring as time. It is the seed, not of death, but of life. Justice does not overthrow Governments. The protection of the lives and liberties and fortunes of the people does not overthrow Governments. It is a disregard of these high duties which brings them into contempt, that brings hate instead of love and reverence. A government true to its duty never yet went down by the hands of its own people, and never will. The heathen may rage, and the people imagine vain things; but the judge of all the earth protects the right.

But, sir, if the dissolution of the Union be the cost of protection, I say, let it come, and the sooner the better. As far as I am concerned, I will support no Government that does not protect my acknowledged constitutional rights to the extent of its powers consistently with the safety of the State. That is the price of my allegiance; and when it ceases to perform that duty, I will do what I can to build up new systems, better suited to perform the great ends of all human government, the protection of life, liberty, and property.

Now, I ask, does the Senator from Illinois stand up to his bargain? His friends and my friends in Georgia are called upon to do it. Let us see. I will read from his Freeport speech, made in 1859, as it is printed in a book containing the debates of that canvass between himself and his competitor. I suppose it is correct. If it is not—and I hope it is not; for I never saw that Freeport speech until within the last forty days—I hope he will disavow it. He must disavow it, to entitle himself to the support of the country. My main objection, but not all my objections, to that speech is contained in the following extracts, namely:

"The next question propounded to me by Mr. Lincoln is: can the people of a Territory, in any lawful way, against the wishes of any citizen of the United States, exclude slavery from their limits prior to the formation of a State constitution? I answer emphatically, as Mr. Lincoln has heard me answer a hundred times, from every stump in Illinois, that in my opinion the people of a Territory can, by lawful means, exclude slavery from their limits prior to the formation of a State constitution. Mr. Lincoln knew that I had answered that question, over and over again. He heard me argue the Nebraska bill on that principle all over the State in 1854, in 1855, and in 1856, and he has no excuse for pretending to be in doubt as to my position on that question. It matters not what way the Supreme Court may hereafter decide as to the abstract question, whether slavery may or may not go into a Territory under the Constitution, the people have the lawful means to introduce it or exclude it, as they please, for the reason that slavery cannot exist a day or an hour anywhere, unless it is supported by local police regulations. Those police regulations can only be established by the local Legislature: and if the people are opposed to slavery they will elect representatives to that body who will, by unfriendly legislation, effectually prevent the introduction of it into their midst. If, on the contrary, they are for it, their legislation will favor its extension. Hence, no matter what the decision of the Supreme Court may be on that abstract question, still the right of the people to make a slave Territory or a free Territory is perfect and complete under the Nebraska bill. I hope Mr. Lincoln deems my answer satisfactory on that point."—*Debates of Lincoln and Douglas*, p. 95.

Well, if he did, he did not know its history. I do not know the extent of Mr. Lincoln's information on that point, though I had a slight and agreeable acquaintance with him some years ago in the Thirtieth Congress. He has since strayed off into bad company. (Laughter.) I have just shown you that, in 1856, Mr. DOUGLAS said that if we had a right to go into a Territory with our slaves, there was no power on earth to put us out. Now he says, "I do not care what the Supreme Court decide, the people of the Territory can turn you out anyhow;" and yet he calls upon us to redeem our faith. Was that the

bargain—"heads I win, tails you lose?" (Laughter.) If the Supreme Court decide for me, there is an end of it; if it decides for you, that is not the end of it—unfriendly legislation can come in. The Kansas Nebraska bill meant to refer it to the people, with an appeal to the courts, and I will stand by that if the decision is for me; but if it is not, although I cannot abolish slavery directly in the face of the court, although I cannot do it by a bold, manly, direct exercise of delegated legislative power, not even by popular sovereignty, I can do it by craft and cunning. Sir, that was not my bargain. I made no such bargain. I show that he and I understood it alike at the time; we have his contemporaneous exposition and mine, and I stand by it to-day; and, in the language of his friend and my friend, I call on him to stand by the bargain. That is my answer. I have asked for bread, and I have got a stone. I have asked for protection to my rights, and I get "popular sovereignty." Sir, this is a question higher than popular sovereignty, higher than a presidential election. Under all this lies the greater question, will the people do right against their prejudices? I know not; I had greater faith before I came here. I owe it to the country and to truth to say, I have lost much of this faith. Republican institutions cannot live without good faith, obedience to law, and, above all, to constitutional obligations. The honorable Senator from Illinois declares to his own constituents, that although he bound them and himself to abide by the decision of the Supreme Court of the United States as to the rights of my constituents in our common Territories, yet, no matter how the court may decide "on that abstract question, still the right of the people to make a slave Territory is perfect and complete under the Nebraska bill." I scarcely believe Judge DOUGLAS ever could have uttered this opinion. Without good faith, without a free, frank compliance with constitutional obligations, with solemn oaths, republican government is a mockery and a snare.

Republican institutions must stand on good faith in the men who administer them. We can only swear them. To teach men to disregard a Constitution, which they have sworn to support, by cavil, by craft, is as bad as by mental reservation. This is poisoning the fountain at its head, and nothing but bitter waters can flow from it. We swear judges; we swear Governors; we swear legislators; we swear jurors; but we cannot punish the miscreants who violate their oaths; and if men in a Territory of the United States are to be taught that, by popular sovereignty, they can all disregard their oaths, and refuse police regulations, or anything else necessary and proper to protect constitutional rights, and if any men can be found base enough to follow such teachings, republican institutions become impossible, and honest men must look to new safeguards for their *security and protection*. Good faith is the basis of republican institutions. You could not put either your executive, legislative, or judicial departments in operation without it. The Constitution said you should have an Executive—how would you get him, without a provision, first, by law? That you should have a judiciary—how would you get it without positive law? So of the legislative. If non-action or unfriendly legislation was lawful, bad men could have lawfully prevented our Government from ever starting in that grand career which it has accomplished. Some clauses of our Constitution confer powers which may be exercised according to wise discretion; others impose duties which no man may disregard. Non-action, unfriendly legislation, is treason to constitutional duty.

Suppose the people of a Territory show themselves unworthy of the performance of their duty, what shall I do? It is a very easy question. I will pass no slave codes such as the Senator from Mississippi (Mr. BROWN) wants. Why? Because among other things I should suppose that men who would disregard the obligations of the Constitution would disregard a law passed in pursuance of it. I do not see how that would help the business in any way at all. I will do as was done in Mr. Jefferson's time, and in Washington's time, with the people of the Territories. If I find the people in a Territory incapable of performing their constitutional functions, I will take their government away from them and put it into hands that will do their duty, and wait until honester and better men go there before I give them permission to perform the functions of government. That was done under the ordinance of 1787; that was done in Louisiana in 1803 and 1804; that was done with all the earlier territorial governments. When people in a Territory become vicious, I would do as we did in 1856 with Kansas, and take the whole business of governing themselves out of their hands—take out of their hands the powers of government, because they will not obey the fundamental laws, and put them where they are safe. If men sworn to support the Constitution of their fathers are faithless to the obligation, it is useless to try them with other laws.

This being my treatment of the case, I wholly differ from the honorable Senator from Mississippi, (Governor BROWN,) who, when constitutional right fails him, resorts to the *lower* law. I saw the debate between him and the Senator from Illinois last year with regret. It reminded me of my early reading on that uninteresting subject of pleadings at common law. It struck me that there was a good deal of adroitness in the way the case was put, but it was all to the advantage of the honorable Senator from Illinois. I suppose it was purely accidental; but it seemed to me the Senator from Illinois very adroitly used it to explain his Freeport speech. I noticed the matter at the time, but felt no in-

terest in it. There was a good deal of adroitness displayed by the Senator from Illinois in avoiding the true issue; and if he had had the making of both sides, it could not have been done better to his own advantage. It looked like a feigned issue, as the common-law lawyers call it, the real parties and real interests not being in the case. The question tried on that issue was between non-intervention and a slave code; whereas the real issue before the country was between squatter sovereignty and constitutional protection. Neither the Senator from Illinois nor the Senator from Mississippi were on the real issue. The country was against both squatter sovereignty and a slave code, the special hobbies of both Senators; and therefore neither of them represented the real issues.

I am against both of your hobbies, and do not choose that the great principle of protection shall be entangled by your disputes. In your contest, if it be a contest, I feel no interest, and do not choose to be a party. The issue they present is between non-intervention (a good thing, properly understood) and a slave code, (a bad thing, no matter how understood.) The issue, as made, is bad enough; but the pleadings, if possible, are worse. The Senator from Mississippi first agreed himself out of his case, according to the statement of his friend, and then clamored for a law that would do him no good; and his friend from Illinois clamored against a law that would do him no harm. This strikes me as a true statement of the case. I have been so much annoyed by politics for some years past, that it has very much interfered with my little early law knowledge; but I think I can explain this even to unprofessional persons.

The Senator from Mississippi made a speech last Congress which attracted a good deal of public attention. The Senator from Illinois, after some kind words and compliments upon its candor and ability, says:

"To a certain point, that Senator and myself agree. Then there comes divergence, which grows wider and wider the further we travel. We agree that, under the decision of the Supreme Court of the United States, slaves are property, standing on an equal footing with all other property; and that, consequently, the owner of a slave has the same right to emigrate to a Territory, and carry his slave property with him, as the owner of any other species of property has to move there and carry his property with him."

In 1856 he said that admission would settle the question, and there was no power of earth could get rid of it then. Here, he says, the court has decided it; but he went on:

"Mr. Doolittle. Will the honorable Senator allow me——

"Mr. Douglas. I am replying to the Senator from Mississippi now, and would prefer, therefore, to go on.

"Mr. Doolittle. I wish to put a question to the honorable Senator from Illinois on that point.

"Mr. Douglas. I desire to deal with this point now. At another time the Senator can present his point. The right of transit to and from the Territories is the same for one species of property as it is for all others. Thus far the Senator from Mississippi and myself agree—that slave property in the Territories stands on an equal footing with every other species of property. Now, the question arises, to what extent is property, slaves included, subject to the local law of the Territory? Whatever power the Territorial Legislature has over other species of property, extends, in my judgment, to the same extent and in like manner, to the slave property. The Territorial Legislature has the same power to legislate in respect to slaves that it has in regard to any other property, to the same extent, and no further. If the Senator wishes to know what power it has over slaves in the Territories, I answer, let him tell me what power it has to legislate over every other species of property, either by encouragement or by taxation, or in any other mode, and he has my answer in regard to slave property.

"But the Senator says that there is something peculiar in slave property, requiring further protection than other species of property. If so, it is the misfortune of those who own that species of property. He tells us that, if the Territorial Legislature fails to pass a slave code for the Territories, fails to pass police regulations to protect slave property, the absence of such legislation practically excludes slave property as effectually as a constitutional prohibition would exclude it. I agree to that proposition. He says, furthermore, that it is competent for the Territorial Legislature, by the exercise of the taxing power, and other functions within the limits of the Constitution, to adopt unfriendly legislation which practically drives slavery out of the Territory. I agree to that proposition."

Then the Senator from Mississippi had no case if he made these admissions. If he stated that it was competent, by the exercise of the power of taxation, to drive slavery out of the Territories, the Senator from Illinois was right in saying he had no case in court. What does the Senator from Mississippi want with a slave code when he admits the Territorial Legislature can drive out slaves? Does he want a code to govern slaves, where he admits they can be lawfully driven out? I dare say, if he will allow that the squatters can lawfully drive out all the masters and slaves of the Territory, they would give him a slave code for the concession. It would certainly neither help nor hurt anybody. I deny the agreed case. I say it is unconstitutional. To withhold a right by non-action is just as fraudulent as to resist it by action, and much less manly. To defeat a constitutional right, whether by action or inaction, is equally violative of an oath to support the Constitution. I trust never to hear any Senator defend such public or private morality. But the honorable Senator from Illinois, when he secures the admission that a Territorial Legislature may do these things, very logically assumes that there are lawful means to defeat constitutional rights. I will wait an explanation of this extraordinary position. How can he imagine that a constitutional right may be lawfully withheld by those whose sworn duty it is to protect and defend it?

I repudiate the admission. I wash my hands of the Senator's slave code, for these as well as additional reasons, which I will now proceed to give. It is no remedy for any wrong to slave property, if passed by Congress. Slave property in a Territory is there under the Constitution, as well as any other property. It depends on the good faith, on the

honor, on the fidelity to the Constitution, of the ruling powers, to give it the same protection as is given to other property, and no other, according to its needs and its wants, and if they fail to extend it they violate their obligations, whether they do it directly or indirectly, by taxation or by any other means. This duty is imposed by the supreme power in the State; if they fail or refuse to perform it, Congress ought to take away from them a power which they have abused, and put it into hands more trustworthy than theirs. That is my remedy. I will not trust men in a Territory, though you may dub them with the ridiculous appellation of sovereigns, who will not obey oaths; who are insensible to the ordinary obligations which hold society together. Look through your early territorial legislation, and you can find abundant remedies to secure protection to any man in the Territories of the United States who has a right to be there. Such remedies are as far as possible from the nonsense of popular sovereignty.

Now, sir, I have reviewed, as far as I deem it necessary, the Constitution, the laws of nations, and the practice of our fathers, in the defence of those gentlemen with whom I act in the South, and who concur with me in these resolutions. I have vindicated our principles to the best of my poor abilities. I have shown that they do not violate any compact or agreement, express or implied, with any man.

It becomes my duty to support these resolutions, with the amendment I propose, because they speak the truth. But I do not require that all the truths I hold shall be made party tests. I recognize open questions as one of the necessities of politics, especially of parties. Therefore, while I would never consent to surrender a sound principle, I would not endanger it by an inopportune assertion of it. "Sufficient unto the day is the evil thereof," is wisdom above man's wisdom. We are struggling against an enemy ever watchful, who denies all of our rights, and seeks to overthrow the Constitution. Drive off no sound man who is against that enemy, even by pressing upon him undeniable political truth unnecessarily; trust something to time. Therefore, I would urge the opponents of the Black Republican party to harmonize. The public safety demands it. Let the Democrats of the South atttend the Baltimore convention, take counsel again with their fellows, show them their compact, demand of them to stand by that compact, and admit our equal rights in the common Territories; demand nothing that you would not grant; but demand nothing which is not now necessary, and which would injure the common cause. Those who are conscious of right, and conscious of their own purpose to maintain their rights, are never exacting. Demand the condemnation of power anywhere to debar you of your equal rights everywhere in the Territories of the United States. Accept no less than this. It is just, and will be granted.

Frown upon any attempt to interpolate your creed with the peculiar errors of popular leaders; demand of your allies the recognition of your constitutional rights as expounded by the judicial tribunals of your country. Their honor is pledged to it; and I have known them too long to doubt that they will refuse your demand. Then select your standard-bearer from among the many distinguished and able patriots whose merits have been tried and approved by the people, and all will be well. The incalculable danger and mischief of abandoning the Government into the hands of the enemies of the Constitution will be averted.

Sir, there is a gleam of light peering even through the dark panoply which surrounds Chicago. The main architect of this gigantic coalition against the Constitution and the hopes of mankind has been slaughtered in the house of his friends. Acteon eaten up by his own dogs. The punishment is severe, but just. The patriotism of the country makes its enemies tremble. They quail before the spirit of true nationality. Another less conspicuous, and, perhaps, less dangerous, but no less willing instrument of these public enemies has been put forth, hoping that, perchance, his obscurity may draw public attention from the public danger. This at least is a tribute to public virtue. Their flag is lowered; the Thanes are flying; unite and let the shout go forth from every city and town, every hamlet and fireside, every mountain top and every valley, from the Atlantic to the Pacific, from the Lakes to the Gulf, "The country is in danger; ho! every freeman to the rescue!"